

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CARLOS E. GUTIERREZ

PLAINTIFF

v.

Civil No. 05-5083

CORPORAL WESLEY KERN

DEFENDANT

O R D E R

Now on this 14th day of February, 2006, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #20), to which no objections have been made, and the Court, having carefully reviewed said Report And Recommendation, finds that it is sound in all respects, and that it should be adopted *in toto*.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** is adopted *in toto*.

IT IS FURTHER ORDERED that, for the reasons stated in the **Report And Recommendation Of The Magistrate Judge**, defendant's **Motion For Summary Judgment** is denied.

IT IS FURTHER ORDERED that this matter is remanded to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE